

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

**MANUAL PEREZ, Individually, and as  
the Executor of the Estate of Dolores  
Perez,**

**Plaintiff,**

**v.**

**Civil No. 1:06-cv-948  
(GLS/RFT)**

**VALASTRO, L.L.C., doing business as  
Adirondack Bar & Grill, and STACY  
L. GOODSPEED as the Administrator  
of the Estate of Jason S. Goodspeed,**

**Defendants.**

**KATHLEEN CURNS and LINDA ZUKAITIS,**

**Plaintiffs,**

**v.**

**Civil No. 1:06-cv-1336  
(GLS/DRH)**

**WAL-MART STORES INC.,**

**Defendant.**

**ENERGY SERVICES PROVIDERS, INC.,**

**Plaintiff,**

**v.**

**Civil No. 1:07-cv-686  
(GLS/DRH)**

**CONSUMER SALES SOLUTIONS, LLC,**

**Defendant.**

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**THE ANDERSON GROUP, LLC and  
GAIL ANDERSON,**

**Plaintiffs,**

**v.**

**Civil No. 1:05-cv-1369  
(GLS/DRH)**

**CITY OF SARATOGA SPRINGS, ET AL.,**

**Defendants.**

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**ONEBEACON AMERICA INSURANCE  
COMPANY, as subrogee of The  
Garrett Hotel Group, Inc.,**

**Plaintiff,**

**v.**

**Civil No. 8:07-cv-900  
(GLS/RFT)**

**COMSEC VENTURES INTERNATIONAL,  
INC., and MAHONEY NOTIFY-PLUS,  
INC.,**

**Defendants.**

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**DONNA HOFER,**

**Plaintiff,**

**v.**

**Civil No. 1:07-cv-1055  
(GLS/DRH)**

**FAMILY OF WOODSTOCK, INC.,**

**Defendant.**

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**CHERYL CIPPERLEY and ART  
CIPPERLEY,**

**Plaintiffs,**

**v.**

**Civil No. 1:07-cv-1136  
(GLS/DRH)**

**ATS, INC. and OCTAVIO CAYETANO,  
SR.,**

**Defendants.**

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**WANT AD DIGEST, INC.,**

**Plaintiff**

**v.**

**Civil No. 1:08-cv-189  
(GLS/DRH)**

**DISPLAY ADVERTISING, INC and  
EDWARD H. SPAIN,**

**Defendants.**

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**TIMOTHY E. COUGHTRY and  
JOANN E. COUGHTRY,**

**Plaintiffs,**

**v.**

**Civil No. 1:08-cv-875  
(GLS/RFT)**

**TRACKER MARINE, LLC,**

**Defendant.**

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**APPEARANCES:**

**OF COUNSEL:**

**PEREZ, ET AL. (1:06-cv-948)**

**FOR PLAINTIFF PEREZ:**

Powers, Santola Law Firm  
39 North Pearl Street  
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JOHN H. FISHER, ESQ.

**FOR DEFENDANT VALASTRO,  
L.L.C.:**

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1624 Genesee Street  
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DAVID H. WALSH, IV, ESQ.

**FOR DEFENDANT GOODSPEED:**

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CHARLES Z. FELDMAN, ESQ.

**CURNS, ET AL. (1:06-cv-1336)**

**FOR PLAINTIFFS CURNS and  
ZUKAITIS:**

Thompson, Wigdor Law Firm  
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**FOR DEFENDANT WAL-MART  
STORES INC.:**

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900 Third Avenue  
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JOEL L. FINGER, ESQ.  
MARGUERITE S. WYNNE, ESQ.

**ENERGY, ET AL. (1:07-cv-686)**

**FOR PLAINTIFF ENERGY SERVICE  
PROVIDERS, INC.:**

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677 Broadway  
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(518) 427-9700

MARK J. MCCARTHY, ESQ.

**FOR DEFENDANT CONSUMER  
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EDWARD G. BAILEY, ESQ.

**ANDERSON, ET AL. (1:05-cv-1369)**

**FOR THE ANDERSON PLAINTIFFS:**

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SPRINGS DEFENDANTS:**

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GREGG T. JOHNSON, ESQ.

**ONE BEACON, ET AL. (8:07-cv-900)**

**FOR PLAINTIFF ONEBEACON  
AMERICA INSURANCE  
COMPANY:**

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The Atrium  
1900 Market Street  
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JAMES E. HACKER, ESQ.

**FOR DEFENDANT COSMEC  
VENTURES INTERNATIONAL  
INC.:**

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ASA S. NEFF, ESQ.

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NOTIFY-PLUS, INC.:**

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3 Gannett Drive  
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CATHLEEN A. GIANNETTA,  
ESQ.  
THOMAS A. LEGHORN, ESQ.  
BERNICE E. MARGOLIS, ESQ.

**HOFLER, ET AL. (1:07-cv-1055)**

**FOR PLAINTIFF HOFLER:**

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NINA LOEWENSTEIN, ESQ.  
CLIFF ZUCKER, ESQ.

**FOR DEFENDANT FAMILY OF  
WOODSTOCK, INC.:**

Roemer, Wallens Law Firm

DIONNE A. WHEATLEY, ESQ.

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Albany, New York 12203  
(518) 464-1300

**CIPPERLEY, ET AL. (1:07-cv-1136)**

**FOR CIPPERLEY PLAINTIFFS:**

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1279 Route 300  
Newburgh, New York 12550  
(845) 562-0203

ELEANOR L. POLIMENI, ESQ.  
FRANCIS NAVARRA, ESQ.

**FOR DEFENDANTS ATS, INC.  
and OCTAVIO CAYETANO, SR.:**

Office of Lorne M. Reiter  
14 Wall Street  
20th Floor  
New York, New York 10005  
(212) 222-0955

LORNE M. REITER, ESQ.

**WANT AD ET AL. (1:08-cv-189)**

**FOR PLAINTIFF WANT AD  
DIGEST, INC.:**

Girvin, Ferlazzo Law Firm  
20 Corporate Woods Boulevard  
2nd Floor  
Albany, New York 12211-2350  
(518) 462-0300

SALVATORE D. FERLAZZO,  
ESQ.  
ROBERT F. MANFREDO, ESQ.

**FOR DEFENDANT  
EDWARD H. SPAIN:**

Edward H. Spain



*Pro Se*  
24 21<sup>st</sup> Street  
Watervliet, New York 12189

**FOR DEFENDANT DISPLAY  
ADVERTISING, INC.**

No Appearance

**COUGHTRY, ET AL. (1:08-CV-875)**

**FOR PLAINTIFFS TIMOTHY  
E. COUGHTRY and JOANN  
E. COUGHTRY:**

Whiteman, Osterman Law Firm  
One Commerce Plaza  
Suite 1900  
Albany, New York 12260  
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WILLIAM S. NOLAN, ESQ.

**FOR DEFENDANT TRACKER  
MARINE, LLC:**

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677 Broadway  
Suite 301  
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(518) 465-2333

RICHARD L. WEISZ, ESQ.

**Gary L. Sharpe  
District Court Judge**

**4<sup>th</sup> Amended Trial Order**

All relevant Uniform Pretrial Scheduling Order deadlines having expired in the above nine (9) captioned cases, are hereby designated “trial ready” in the numerical order listed, and shall proceed to trial during a jury term beginning on **Monday, May 17, 2010**, and continuing thereafter on a daily schedule. All listed actions are governed by this Scheduling Order **unless** they are designated “exempt” according to the terms of this order, and a new Scheduling Order is issued by a Magistrate or District Court Judge.

In order of priority, the cases are designated as follows:

1. **Perez, et al. (1:06-cv-948);**
2. **Curns, et al. (1:06-cv-1336);**
3. **Energy Services, et al. (1:07-cv-686);**
4. **Anderson, et al. (1:05-cv-1369);**
5. **OneBeacon, et al. (8:07-cv-900);**
6. **Hofler, et al. (1:07-cv-1055);**
7. **Cipperley, et al. (1:07-cv-1136);**
8. **Want Ad Digest, Inc., et al. (1:08-cv-189);**
9. **Coughtry, et al. (1:08-cv-875);**

### **Schedule**

Unless an action is designated “exempt,” all parties **shall** proceed in accordance with the schedule established in this order and attachment.

### **Trials**

The attorneys and parties in the first action on the trial ready list, or in the first action on any subsequently amended trial ready list, **shall appear** at Courtroom No. 6, 445 Broadway, Albany, New York, First Floor, South, for trial beginning promptly at **9:30 a.m. on Monday, May 17, 2010**.

Each succeeding action on the trial ready list shall proceed on the day following completion of the action preceding it, unless a different date is otherwise ordered by the court.

The parties are hereby notified that their trial dates **will advance** should a case preceding them on the trial ready list settle, or for any other reason, be removed from the list.<sup>1</sup> The parties are further advised that should a case be removed from the trial ready list because of settlement or

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<sup>1</sup>The attorneys representing each party on the trial ready list are set forth in the caption, and parties are free to consult with those ahead of them on the list. Furthermore, the parties may consult with Courtroom Deputy, John Law, concerning alterations in their numerical order, and will receive electronic notice as soon as is reasonably practicable should such alterations occur.

some other non-exempt factor on or after **Thursday, May 13, 2010, at 4:00 p.m.**, the court may impose **sanctions** pursuant to N.D.N.Y. L.R. 47.3.

### **Final Pretrial Conferences**

To the extent practicable, final pretrial conferences will be subsequently scheduled within the week preceding the anticipated trial date. The attorneys for all parties in each action **shall appear** at this court's chambers, 445 Broadway, Albany, New York, First Floor, South, for the final pretrial conference.

***Note: The court will not conduct a settlement conference during the final pretrial conference. The co-assigned Magistrate Judges are available for settlement conferences, and the court expects that parties, if they elect to do so, will schedule such a conference with the Magistrate Judge on or before May 6, 2010.***

### **Pretrial Submissions**<sup>2</sup>

Pursuant to **Attachment 1**, pretrial submissions **in all cases shall be filed in accordance with the schedule set forth in Attachment 1.**

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<sup>2</sup>To the extent that the requirements of this Order and attachments are inconsistent with any prior Uniform Pretrial Scheduling Order, this Order and attachments control.

### **Exemptions**

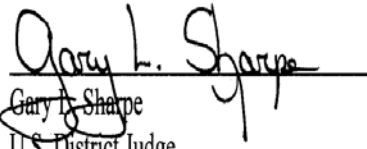
If a case is designated as “exempt” because it meets either of the two following criteria, it will be removed from the trial ready list and referred to a designated Judge who may elect to issue a new scheduling order setting new fixed dates for all further proceedings, including pretrial submissions and trial:

1. If, on or before **expired**, all parties in an action file a Consent to the Exercise of Jurisdiction by a Magistrate Judge (see General Order 25, 28 U.S.C. § 636(c), N.D.N.Y. L.R. 72.2(b), and Attachment), the court will issue an Order of Reference, and designate the action as “exempt”; or

2. If this court subsequently refers an action to another District Court Judge, the case will be designated “exempt” if the referral Judge elects to issue an amended scheduling order.

**IT IS SO ORDERED.**

April 13, 2010  
Albany, New York

  
\_\_\_\_\_  
Gary L. Sharpe  
U.S. District Judge

**Attachment #1**

**Pretrial Submissions**

***N.B.*** Unless otherwise noted, all parties shall electronically file and serve all pretrial submissions in accordance with General Order No. 22, ¶ 5.

The following pretrial submissions **shall** be filed in accordance with this Order.

**1. Joint Pretrial Stipulation**

On or before **expired**, a joint pretrial stipulation shall be subscribed by counsel for all parties, and shall contain:

- (1)** The basis of federal jurisdiction;
- (2)** A list of all exhibits which can be stipulated into evidence or which will be offered without objection as to foundation; and
- (3)** Relevant facts not in dispute.

**2. Voir Dire**

On or before **expired**, each party shall submit a numbered list of questions which the court, in the exercise of its discretion, may use during jury selection.

**3. Witnesses**

- (1)** On or before **expired**, counsel shall file a witness list containing the following information regarding the witnesses that may be called to testify at trial other than solely for impeachment purposes:

- (a) The name and, if not previously provided, the address (city only) of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises.

**N.B.: Personal Privacy Protections may apply to disclosure of this information. See Local Rule 8.1; General Order No. 22, ¶¶ 2.1.3, 11.1-11.2 and 12.2.**

- (b) The designation of those witnesses whose testimony is expected to be presented by means of a deposition (including video-taped deposition), specifically identifying the pertinent portions of the deposition testimony to be offered.

(2) The unavailability of any witness, expert, or otherwise, will not be grounds for a continuance. In order to avoid the possibility of proceeding at trial without the testimony of an unavailable witness, counsel, where appropriate, shall preserve the testimony by written or video-taped deposition for possible use at trial. (Please refer to the attached instruction sheet for the use of video-taped depositions.)

#### **4. Exhibits**

- (1) All exhibits shall be marked for identification in the manner prescribed hereinafter. A complete set of copies of the exhibits or, alternatively, a copy of a CD-ROM containing the exhibits shall be presented to Judge Sharpe's Deputy Courtroom Clerk **AT THE BEGINNING OF TRIAL.**

- (2) The exhibits shall have been inspected by the opposing party and copied at their expense (unless waived) **BEFORE TRIAL COMMENCES**. All documents and/or papers intended as exhibits or to be used during the course of trial, including but not limited to documents, photographs, charts, diagrams, etc., shall be assembled in **BINDERS AND/OR ON CD-ROM** with each document properly marked at the lower right corner for identification purposes as directed below. In voluminous cases, consult with Judge Sharpe's Courtroom Clerk for the proper procedure to follow.
- (3) During the course of trial the Deputy Courtroom Clerk shall take charge of exhibits that are received into evidence. At the conclusion of the trial, the Courtroom Deputy Clerk will immediately return all of the exhibits to the proper parties. It is the responsibility of the parties to maintain the exhibits and to produce the exhibits for any appeal.
- (4) **BEFORE TRIAL COMMENCES**, counsel shall electronically file and serve an Exhibit List. The exhibits shall be listed on the form prescribed by the Court, a copy of which is attached to this Order. Counsel are to supply all the requested information with the exception of the two "Date Boxes" which should remain blank.
- (5) Counsel shall fill in the appropriate markers leaving the "File" and "Deputy Clerk" lines blank. All exhibits shall be assigned numbers by using a prefix of "P" for plaintiff, "D" for defendant, and "G" for Government (U.S. Attorney).

Plaintiff's exhibits should be denoted as: P-1, P-2, P-3, etc. Defendant's exhibits should be denoted as: D-1, D-2, D-3, etc. Government's exhibits should be denoted as: G-1, G-



2, G-3, etc. In cases involving multiple defendants, the exhibits shall be denoted with the initial of the last name of the defendant and its numerical identification number.

Stickers shall be affixed whenever possible to the lower right-hand corner of the exhibit. If the exhibit marker is going to cover any information on the exhibit, then affix the marker to the reverse side of the exhibit.

**5. Trial Brief**

On or before **expired**, counsel shall electronically file and serve a trial brief containing argument and citations on any and all disputed issues of law, citing the applicable rules of evidence and case law. Trial briefs should also include any evidentiary issues that are expected to arise.

**6. Requests to Charge and Proposed Special Verdict Form**

On or before **expired**, counsel shall ***traditionally*** file with the Clerk's Office and serve upon opposing counsel requests to charge and a proposed Special Verdict Questionnaire on either a CD-ROM or 3.5-inch computer disk, preferably in WordPerfect format. The requests to charge need only include instructions that are specific to the law in this case regarding liability, damages, and any unusual issues. The Court has usual boilerplate instructions.

**7. Motions in Limine**

On or before **expired**, counsel shall electronically file and serve any motions in limine, citing the applicable rules of evidence and case law. Opposing counsel shall file any response to motions in limine no later than **April 19, 2010**.

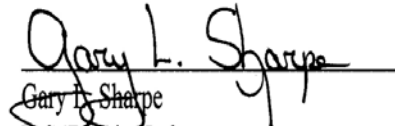
**MOTIONS IN LIMINE MAY NOT OTHERWISE BE FILED**

**WITHOUT LEAVE OF THE COURT.**

**8. Depositions**

- (1) **BEFORE TRIAL**, counsel shall electronically file all non-video taped depositions to be used at trial. Counsel shall traditionally file all video-taped depositions to be used at trial. (See General Order No. 22, ¶¶ 1.2, unnumbered paragraph following 2.1.6). To the extent possible, objections are to be resolved between the parties. Areas of unresolved disagreement shall be presented to the Court for ruling at the Final Pretrial Conference. (See attached instruction sheet for use of video-taped depositions.)

April 13, 2010  
Albany, New York

  
Gary L. Sharpe  
U.S. District Judge

**INSTRUCTIONS FOR THE USE OF VIDEO TAPED DEPOSITIONS**

COUNSEL ARE TO VIEW ALL VIDEOTAPES WHICH MAY BE OFFERED INTO EVIDENCE AT THE TIME OF TRIAL. ALL VIDEO-TAPED DEPOSITIONS TO BE USED AT TRIAL SHALL BE FILED WITH THE CLERK'S OFFICE AT LEAST ONE WEEK BEFORE THE TRIAL READY DATE. NOT EARLIER THAN ONE WEEK AND NOT LESS THAN FOUR DAYS PRIOR TO THE TRIAL READY DATE, EACH PARTY SHALL INDICATE TO THE OTHER PARTY THE PORTION OF THE DEPOSITION TO BE OFFERED. TO THE EXTENT POSSIBLE, OBJECTIONS ARE TO BE RESOLVED BETWEEN THE PARTIES. COUNSEL SHALL SUBMIT ALL OBJECTIONS IN WRITING TO THE COURT FOR RULING PRIOR TO THE TRIAL READY DATE.

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THE CLERKS OFFICE HAS AVAILABLE A VHS FORMAT VIDEO CASSETTE PLAYER AND TELEVISION FOR USE AT TRIAL. PLEASE BE ADVISED THAT YOU MUST PROVIDE A PERSON TO RUN THE EQUIPMENT DURING THE COURSE OF THE TRIAL.

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**ELECTRONIC VISUAL EVIDENCE PRESENTER**

IN ADDITION TO THE VIDEO EQUIPMENT NOTED ABOVE, THE COURT HAS AVAILABLE A VISUAL EVIDENCE PRESENTER WHICH WILL ALLOW COUNSEL TO DISPLAY PHOTOS (NEGATIVES OR POSITIVES), DOCUMENTS, X-RAYS, AND 3-D OBJECTS , WITHOUT WIRES, ON TELEVISIONS PLACED THROUGHOUT THE COURTROOM. THIS EQUIPMENT IS AVAILABLE AT THE COURTHOUSES IN ALBANY, SYRACUSE, UTICA AND BINGHAMTON. USE OF THE VISUAL PRESENTER MAY BE REQUIRED BY THE TRIAL JUDGE PRESIDING OVER YOUR CASE. FOR FURTHER INFORMATION ON THE USE OF THIS EQUIPMENT, PLEASE CONTACT THE COURTROOM DEPUTY CLERK FOR THE ASSIGNED TRIAL JUDGE.

<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ PLAINTIFF EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>	<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ DEFENDANT EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>
<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ PLAINTIFF EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>	<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ DEFENDANT EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>
<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ PLAINTIFF EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>	<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>CASE NO. _____ DEFENDANT EXHIBIT NO. _____ DATE ENTERED _____</p> <p>LAWRENCE K. BAERMAN, CLERK BY: _____ DEPUTY CLERK</p>

Page 1 of \_\_\_\_

United States District Court  
For The Northern District Of New York

Case No. \_\_\_\_\_

Date: \_\_\_\_\_

Presiding Judge: \_\_\_\_\_

☐ Plaintiff☐ Defendant☐ Court

Exhibit No.	Marked for Identification	Admitted Into Evidence	Remarks	Witness	Exhibit Description

Exhibits Returned To Counsel (Date): \_\_\_\_\_

Signature: \_\_\_\_\_

Page \_\_ of \_\_

Exhibit No.	Marked for Identification	Admitted Into Evidence	Remarks	Witness	Exhibit Description

Exhibits Returned To Counsel (Date): \_\_\_\_\_

Signature: \_\_\_\_\_